PAN ASIA SHIPYARD & ENGINEERING CO. PTE. LTD.

v.

LIM KUY BAK & ANOR.

HIGH COURT, SINGAPORE
AP RAJAH J
[MOTION IN SUIT NO. 5971 OF 1984]
3 OCTOBER 1984

COMPANY LAW: *Debenture holder - Appointment of Receiver and Manager - Whether proper and valid - Whether 2nd defendant qualified to act as Receiver and Manager - Interim injunction.*

On 28 August 1984 the second defendant was appointed as Receiver and Manager by the defendant, under a Debenture dated 2 August 1984. The Debenture was made between the plaintiff and the first defendant, who is the Debenture Holder.

The plaintiff filed this motion for Orders:

(a) that the second defendant be restrained from acting as Receiver of the plaintiff company and entering the company's premises until after the trial of this action or until further order;

(b) that the costs of this motion be costs in the cause.

The main question raised here is whether the appointment of the second defendant as Receiver and Manager was good and valid. The first defendant contended that he relied on Clause 6(2)(g) for the appointment. The clauses relevant to the appointment of Receiver and Manager are Clause 1, 6 and 9 of the Debenture.

Held:

[1] The person to appoint the Receiver is "a Director, General Manager, Secretary or Manager for the time being of the Debenture Holder" and not the Debenture Holder. Therefore the appointment is not proper and valid.

[2] The interim injunction to continue till the date of trial or further order.

[Appointment of Receiver, not proper and valid.]

Legislation referred to:
Companies Act (Cap 183) [Sing], s. 182.

For the plaintiffs - Judith Prakash
For the defendants - Ananmah Tan

JUDGMENT

AP Rajah J:

This was a motion wherein the plaintiffs sought the following orders:

(1) That the 2nd defendant be restrained from acting as Receiver of the plaintiff company and from entering the plaintiff company's premises from the date hereof until after the trial of this action or until further order.

(2) That the costs of this motion be costs in the cause.

The main question here, as I saw it, was whether the appointment of the 2nd defendant by the 1st defendant on 28 August 1984 as Receiver and Manager under a Debenture dated 2 August 1984 made between the plaintiffs and the 1st defendant (the Debenture Holder) was a good and valid appointment. The clauses relevant to the appointment of Receiver and Manager are Clause 1, 6 and 9 of the Debenture which read respectively as follows:

Clause 1. **Payment to the Debenture Holder**
The loan free of interest but together with any other money due and owing or which shall be due or owing from the company to the Debenture Holder pursuant to this Deed shall be repaid by the company to the Debenture Holder within nine (9) months from the date of release or disbursement of the loan.

Clause 6. **Security Enforceable in Certain Events**
(1) The whole of the loan lent or advanced by the Debenture Holder or any part thereof for the time being outstanding and unpaid together with all other money's hereby secured shall become immediately payable to the Debenture Holder.

(2) In addition and without prejudice to the provisions aforesaid the moneys mentioned in the preceding Sub-Clause (1) hereof shall also become immediately payable in any of the events following:

(a) If an order is made or a resolution is passed for the winding up of the company.

(b) If a distress or execution is levied or enforced upon or against any of the chattels or property of the company and are not paid out or discharged within five (5) days.

(c) If a receiver is appointed of the undertaking of the company or any of its property or assets.

(d) If the company stops payment or ceases or threatens to cease to carry on its business.

(e) If the company commits or threatens to commit a breach of any covenant or stipulation herein contained and on its part to be observed or performed and fails to remedy it within seven (7) days after notice from the Debenture Holder requiring it so to do.

(f) If a notice or proposal for compulsory acquisition of the property charged hereunder or any part thereof shall be issued or made under or by virtue of any Ordinance Act of Parliament of other statutory provisions.

(g) If in the opinion of the Debenture Holder the security hereunder or the business of the company is in jeopardy and notice thereof has been given to the company.

Clause 9. **Appointment of Receiver**
At any time after the loan and other moneys hereby secured shall have become payable under Clause 6 hereof the Debenture Holder may by writing under the hand of a Director, General Manager, Secretary, or Manager for the time being of the Debenture Holder appoint any person to be a Receiver of the undertaking of the company any of its property or assets hereby charged and may in like manner from time to time remove any such Receiver so appointed and appoint another in his stead.

In terms of Clause 9 of the Debenture, the person to appoint the Receiver is "a Director, General Manager, Secretary or Manager for the time being of the Debenture Holder" and not the Debenture Holder. I therefore held that there had been no proper and valid appointment.

By virtue of Clause 1, the loan was to be repaid by the plaintiffs to the 1st defendant within nine months of the date of release or the disbursement of the loans. These loans were made during the second half of August 1984. I held that under Clause 6(1) the loans had not become immediately payable to the Debenture Holder as they were only payable within nine months after the lending of the moneys.

The 1st defendant further says that he is relying on Clause 6(2)(g) for the appointment of the 2nd defendant as Receiver and Manager. On 27 August 1984 the 1st defendant wrote to the plaintiffs as follows:

> Dear Sirs
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> I, Lim Kuy Bak, of 29 Watten Heights, Singapore 1128, am in receipt of letters from Tat Lee Bank Limited and Bank of China informing Pan Asia Shipyard and Engineering company Pte Limited that the latter's account with the said Banks have been suspended. In view of this, it is apparent that my debenture dated 2 August 1984, and the business of the company is in jeopardy.
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> Accordingly I am giving you notice that the loan granted by me under the said debenture has now become payable, within twenty four (24) hours from 4.00 p.m. 27 August 1984 pursuant to Clause 6(2)(g) of the said debenture.

It will be noted that the Bank of China's letter and the Tat Lee Bank's letter are dated the 18 July 1984 and 2 August 1984 respectively, both written well before the 1st defendant lent moneys to the plaintiffs under the Debenture. The security under the Debenture, or the business of the company was in no greater jeopardy on 27 August 1984 than it was when the Debenture Holder made the loans to the company. In my view this was not a *bona fide* exercise of the power and the moneys had therefore not become "immediately payable" on 27 August 1984.

I therefore ordered that the interim injunction do continue up till the date of trial or further order.

At the hearing the question of whether the 2nd defendant was qualified to be appointed and to act as Receiver and Manager was not raised. On looking into this matter further it would appear that by virtue of s. 182 of the Companies Act (Cap. 183) (the Act), the 2nd defendant is not qualified to act as Receiver and Manager. The affidavit of the 2nd defendant sworn to on 4 September and filed herein on 7 September 1984 gives no indication that he has complied with the provisions of s. 8 of the Act.

Also found at [1984] 2 CLJ 197